

Publications

Employees of Federal Contractors Must Be Vaccinated Against COVID-19

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In September, President Biden issued an Executive Order requiring that all employees (with limited exceptions) working on or in connection with covered federal government contracts be fully vaccinated against COVID-19. The Safer Worker Federal Workforce Task Force then issued its *COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors* implementing the Executive Order and mandating that employees be fully vaccinated by December 8, 2021. The Guidance is promulgated pursuant to federal law and therefore supersedes any contrary state or local law.

What federal contracts are covered?

The vaccine mandate applies to the following prime federal contracts and subcontracts:

1. Procurement contracts for services, construction, or a leasehold interest in real property;
2. Contracts for services covered by the Service Contract Act;
3. Contracts for concessions; and
4. Contracts entered into with the federal government in connection with federal property or lands and related to offering services for federal employees, their dependents or the general public.

The vaccine mandate does not apply to grants, contracts and subcontracts that are less than \$250,000, or to subcontracts solely for the provision of products.

What employees are covered by the vaccination mandate?

The vaccination mandate applies to all “covered employees,” unless they are legally entitled to an accommodation (e.g., for medical or religious reasons). A “covered employee” is any employee “working on or in connection with a covered contract or working at a covered contractor workplace.” This includes employees who perform duties necessary to the performance of the contract, but who are not directly

engaged in performing the specific work called for by the contract, such as human resources, billing, and legal review. Covered employees also include remote workers. This means an employee working on a covered contract from a home location must be fully vaccinated even if the employee never works at the contractor's workplace during the performance of the contract.

Other than legally required accommodations, there is no alternative to the vaccination requirement. In other words, a contractor cannot institute or permit regular COVID-19 testing as a substitute to vaccination.

Contractors must review their employees' documentation to prove their vaccination status. An employee's attestation or antibody test is not sufficient.

What additional safety measures are required?

In addition to the vaccine mandate, covered contractors must implement masking and physical distancing in accordance with CDC guidance. Fully vaccinated employees must wear a mask in indoor settings in areas of high or substantial community transmission. They do not have to physically distance, however. By contrast, unvaccinated employees must **always** wear an appropriate mask indoors and in crowded outdoor settings (subject to some exceptions), and they should also physically distance.

Contractors also must designate an individual (or individuals) to ensure that covered employees comply with the vaccination, masking, and physical distancing requirements as well as any other safety protocols.

When are these requirements effective?

For contracts awarded before October 15, 2021, where performance is ongoing, the requirements will be incorporated at the point at which an option is exercised or an extension is made. For new contracts, the requirements will be incorporated into contracts awarded on or after November 14, 2021. Covered employees must be vaccinated by December 8, 2021.

Conclusion

Neither the Executive Order nor the Task Force's Guidance currently set forth specific penalties for noncompliance. Federal contractors and subcontractors should review both existing and new contracts to determine whether their contracts trigger or will trigger the vaccine mandate. Contractors also should anticipate that, even if their contracts are not currently covered, they may become so in the future. The Guidance "strongly encourages" all federal agencies to incorporate a clause requiring compliance into contracts that are not covered or directly addressed by the Executive Order because the contract is under the \$250,000 threshold or is a contract or subcontract for the manufacturing of products. Contact your Vorys lawyer if you have questions about the federal contractor vaccine mandate or other obligations of federal contractors.

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Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.